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5 | Counsel for Plaintiff and the Putative Classes

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMANDA HILL, individually and on behalf of all others similarly situated,

| Case No.

Plaintiff,

CLASS ACTION COMPLAINT

v.
QUICKEN LOANS INC.,

(JURY TRIAL DEMANDED)

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Defendant.

Plaintiff Amanda Hill, individually and on behalf of all others similarly situated, complains and alleges as follows based on personal knowledge as to herself, on the investigation of her counsel, and on information and belief as to all other matters. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth in this complaint, after a reasonable opportunity for discovery.

NATURE OF ACTION

1. Plaintiff brings this action for legal and equitable remedies resulting from the illegal actions of Quicken Loans Inc. in transmitting unsolicited, autodialled SMS or MMS text messages, *en masse*, to Plaintiff's cellular device and the cellular devices of numerous other individuals across the country, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA").

JURISDICTION AND VENUE

2. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

4 3. Personal jurisdiction and venue are proper in this district because Plaintiff resides in
5 this district and Plaintiff's claims arose in substantial part in this district. Defendant directed the text
6 messages received by Plaintiff into this district by transmitting the messages to a telephone number
7 that is assigned an area code (951) corresponding to a location in this district. Plaintiff received
8 Defendant's unsolicited text messages on her cellular device while present in this district.

PARTIES

10 4. Plaintiff is an individual and a “person” as defined by 47 U.S.C. § 153(39). Plaintiff
11 is, and at all times mentioned herein was, a citizen and resident of Wildomar, California.

12 5. Defendant Quicken Loans Inc. is a “person” as defined by 47 U.S.C. § 153(39).
13 Defendant maintains, and at all times mentioned herein maintained, its corporate headquarters
14 in Detroit, Michigan.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

16 6. To address consumer complaints regarding certain telemarketing practices, Congress
17 enacted the TCPA, 47 U.S.C. § 227, in 1991. The TCPA prohibits, *inter alia*, the use of automated
18 telephone equipment, or “autodialers,” to make any call, including sending a text message, to a
19 wireless number absent an emergency or the “prior express consent” of the party called. And in the
20 case of calls or text messages that constitute “advertisements” or “telemarketing”, as defined by
21 applicable regulations, the TCPA requires the “prior express written consent” of the called party
22 before initiating such calls or texts using an autodialer or prerecorded voice.

23 7. According to findings by the Federal Communication Commission (“FCC”), which is
24 vested with authority to issue regulations implementing the TCPA, autodialed calls and texts are
25 prohibited because receiving them is a greater nuisance and more invasive than live solicitation calls
26 and they can be costly and inconvenient. The FCC also recognized that wireless customers are
27 charged for such incoming texts whether they pay in advance or after the texts are used.

1 8. One of the most prevalent bulk advertising methods employed by companies today
 2 involves the use of “Short Message Services” (or “SMS”), which is a system that allows for the
 3 transmission and receipt of short text messages to and from wireless telephones. Another similar
 4 service called “Multimedia Messaging Services” (or “MMS”) is based upon and similar to the SMS
 5 system, but also permits the transmission of photos and videos via text message. According to a
 6 recent study, “[s]pam isn’t just for email anymore; it comes in the form of unwanted text messages
 7 of all kinds — from coupons to phishing schemes — sent directly to user’s cell phones.”²

8 9. SMS and MMS text messages are directed to a wireless device through a telephone
 9 number assigned to the device. When an SMS or MMS text message is successfully transmitted, the
 10 recipient’s wireless phone alerts the recipient that a message has been received. SMS and MMS text
 11 messages are received virtually anywhere in the world.

12 10. Unlike more conventional advertisements, SMS and MMS message advertisements
 13 can actually cost their recipients money because wireless phone users must pay their wireless service
 14 providers either for each text message they receive or incur a usage allocation deduction to their text
 15 messaging or data plan, regardless of whether the message is authorized.

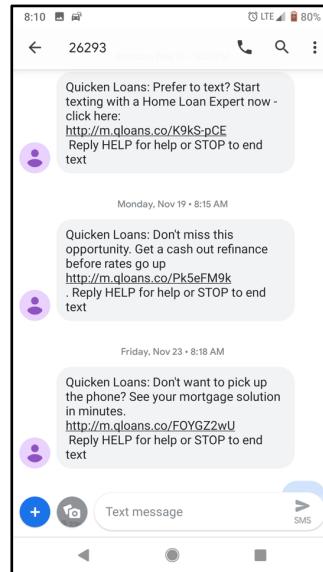
16 11. Moreover, the transmission of an unsolicited SMS or MMS text message to a cellular
 17 device is distracting and aggravating to the recipient and intrudes upon the recipient’s seclusion.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

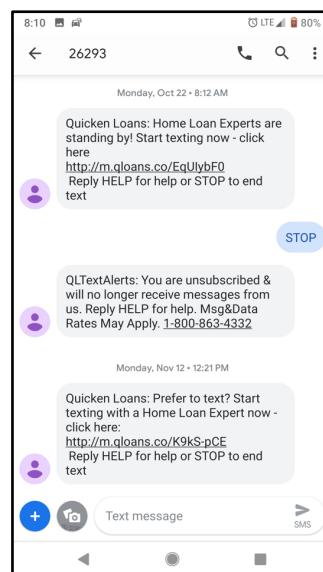
19 12. Plaintiff is, and at all times mentioned herein was, the subscriber of the cellular
 20 telephone number (951) ***-9785 (the “9785 Number”). The 9785 Number is, and at all times
 21 mentioned herein was, assigned to a cellular telephone service as specified in 47 U.S.C. §
 22 227(b)(1)(A)(iii). The 9785 Number is, and at all times mentioned herein was, listed on the National
 23 Do Not Call Registry List (the “DNC List”), including more than thirty (30) days prior to receiving
 24 Defendant’s unsolicited text messages.

27 2 Cell Phones and American Adults: They Make Just as Many Calls, but Text Less than Teens, Pew
 Research, <http://www.pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx>.

1 13. For over at least the past year, continuing through the present, Defendant transmitted
 2 or caused to be transmitted, by itself or through an intermediary or intermediaries, numerous SMS or
 3 MMS text messages to the 9785 Number without Plaintiff's prior express written consent, an example
 4 of which is depicted in the screenshot below, which was extracted from Plaintiff's cellular device:



14 14. Plaintiff has on several occasions attempted to put a stop to Defendant's invasive text
 15 messages by responding "STOP," to no avail. For instance, over a week before receiving the text
 16 messages depicted in the screenshot above, Plaintiff had texted "STOP" in an attempt to end the
 17 onslaught of Defendant's digital junk mail, as shown in the screenshot below, also extracted from
 18 Plaintiff's cellular device:



1 15. Despite these clear instructions to STOP, Defendant is nonetheless undeterred. Its
2 texts to the 9785 Number persist. The TCPA was enacted to end this sort of contumacious behavior.

3 16. The hyperlinked URLs within the above-depicted text messages were leased or owned,
4 and were operated and maintained, by Defendant or an agent or affiliate of Defendant.

5 17. When visited, the URLs in the above-depicted text messages re-direct to website(s)
6 owned and operated by Defendant, where Defendant advertises and markets the commercial
7 availability of its mortgage-lending and other lending goods and services, which Defendant sells for
8 profit.

9 18. The source of the unsolicited text messages that Defendant transmitted to the 9785
10 Number was 26293, which is a telephone number leased by Defendant or Defendant's agent(s) or
11 affiliate(s) and is used for operating Defendant's text message marketing program.

12 19. Because Plaintiff is alerted by her cellular device, by auditory or visual means,
13 whenever she receives a text message, the unsolicited text messages that Defendant transmitted to
14 Plaintiff's cellular device were invasive and intruded upon Plaintiff's seclusion upon receipt. Plaintiff
15 became distracted and aggravated as a result of receiving Defendant's unsolicited text messages.

16 20. All telephone contact by Defendant or affiliates, subsidiaries, or agents of Defendant
17 to Plaintiff's 9785 Number and to the numbers of the members of the Class defined below occurred
18 using an "automated telephone dialing system" as defined by 47 U.S.C. § 227(b)(1)(A).

19 21. Defendant transmitted its text messages to the 9785 Number and to the numbers of the
20 members of the Class defined below using an "automated telephone dialing system" because its text
21 messages were sent from a telephone number used to message consumers *en masse*; because
22 Defendant's dialing equipment includes features substantially similar to a predictive dialer, inasmuch
23 as it is capable of making numerous calls or texts simultaneously (all without human intervention);
24 and because the hardware and software used by Defendant to send such messages have the capacity
25 to store, produce, and dial random or sequential numbers, or to receive and store lists of telephone
26 numbers and to then dial such numbers, *en masse*, in an automated fashion and without human
27 intervention.

1 22. And indeed, Defendant actually transmitted the text messages at issue in this case to
2 Plaintiff and all other unnamed Class members in an automated fashion and without human
3 intervention, with hardware and software that received and stored lists of telephone numbers to be
4 dialed and then dialed such numbers automatically.

5 23. The complained of SMS and/or MMS text messages sent by Defendant to the 9785
6 Number and to the numbers of the members of the Class defined below constituted “advertisements”
7 and/or “telemarketing” material within the meaning of the applicable TCPA regulations. This is
8 because Defendant sent the messages in order to advertise and market its mortgage-lending and other
9 lending goods and services, for the purpose of ultimately selling such goods and services to Plaintiff
10 and other Class members for commercial profit.

11 24. Whether or not Defendant's text messages to Plaintiff and others similarly situated
12 were sent via ATDS, the unsolicited text messages were sent pursuant to a common telemarketing
13 scheme for which the Defendant, or any agent or intermediary acting on its behalf, did not comply
14 with, and thus violated, the telemarketing and DNC List restrictions of the TCPA and the telephone
15 solicitation restrictions in 47 C.F.R. § 64.1200(c)-(e).

16 25. Neither Plaintiff nor any members of the proposed Class provided their “prior express
17 written consent” to Defendant or any affiliate, subsidiary, or agent of Defendant to permit Defendant
18 to transmit text messages to the 9785 Number or to any of the Class’s telephone numbers using an
19 “automatic telephone dialing system” within the meaning of 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

21 26. “ATDS Class” Definition. Plaintiff brings this civil class action on behalf of herself
22 individually and on behalf of all other similarly situated persons as a class action pursuant to Federal
23 Rule of Civil Procedure 23. The “ATDS Class” which Plaintiff seeks to represent is comprised of and
24 defined as follows:

25 All persons within the United States to whom, between January 28,
26 2015 and the present, one or more text message(s) promoting
27 Defendant's goods or services was delivered by Defendant or an
affiliate, subsidiary, or agent of Defendant, and who did not provide
Defendant prior express written consent to be sent such text
message(s).

1 27. “Failure to STOP Class” Definition. Additionally, Plaintiff brings this civil class
2 action pursuant to Fed. R. Civ. P. 23 on behalf of herself individually and as a representative of the
3 following class of persons (the “Failure to STOP Class”) entitled to statutory damages under the
4 federal TCPA:

5 All persons in the United States who, between January 28, 2015 and
6 the present, received one or more text message(s) promoting the sale of
7 Defendant’s goods or services sent by Defendant or an affiliate,
subsidiary, or agent of Defendant, after having previously responded
“STOP” to one or more such text message(s).

8 28. “DNC List Class” Definition. Additionally, Plaintiff brings this civil class action
9 pursuant to Fed. R. Civ. P. 23 on behalf of herself individually and as a representative of the following
10 class of persons (the “DNC List Class”) entitled to statutory damages under the federal TCPA:

11 All persons in the United States who, between January 28, 2015 and
12 the present, received more than one text message, in any 12-month
13 period, promoting the sale of Defendant’s goods or services sent by
Defendant or an affiliate, subsidiary, or agent of Defendant more than
30 days after registering their telephone number on the National Do-
Not-Call Registry.

14 29. Defendant, its employees, and agents are excluded from the Classes.

15 30. Plaintiff reserves the right to modify the definition of the Classes (or add one or more
16 subclasses) after further discovery.

17 31. Plaintiff and all Class members have been impacted and harmed by the acts of
18 Defendant or its affiliates or subsidiaries.

19 32. This Class Action Complaint seeks injunctive relief and monetary damages.

20 33. This action may properly be brought and maintained as a class action pursuant to
21 Federal Rule of Civil Procedure 23(a) and (b). This class action satisfies the numerosity, typicality,
22 adequacy, commonality, predominance, and superiority requirements.

23 34. Upon application by Plaintiff’s counsel for certification of the Classes, the Court may
24 also be requested to utilize and certify subclasses in the interests of manageability, justice, or judicial
25 economy.

26 35. Numerosity. The number of persons within the Classes is substantial, believed to
27 amount to thousands of persons dispersed throughout the United States. It is, therefore, impractical

1 to join each member of the Classes as a named plaintiff. Further, the size and relatively modest value
2 of the claims of the individual members of the Classes renders joinder impractical. Accordingly,
3 utilization of the class action mechanism is the most economically feasible means of determining and
4 adjudicating the merits of this litigation.

5 36. Typicality. Plaintiff was sent at least one text message from Defendant without
6 providing her “prior express written consent” to be sent such message(s) from Defendant within the
7 meaning of the TCPA. Consequently, the claims of Plaintiff are typical of the claims of the members
8 of the Classes, and Plaintiff’s interests are consistent with and not antagonistic to those of the other
9 Class members she seeks to represent. Plaintiff and all members of the Classes have been impacted
10 by, and face continuing harm arising out of, Defendant’s violations or misconduct as alleged herein.

11 37. Adequacy. As Class representative, Plaintiff has no interests adverse to, or which
12 conflict with, the interests of the absent members of the Classes, and is able to fairly and adequately
13 represent and protect the interests of such a Classes. Plaintiff has raised viable statutory claims of the
14 type reasonably expected to be raised by members of the Classes and will vigorously pursue those
15 claims. If necessary, Plaintiff may seek leave to amend this Class Action Complaint to add additional
16 Class representatives or assert additional claims.

17 38. Competency of Class Counsel. Plaintiff has retained and is represented by
18 experienced, qualified, and competent counsel committed to prosecuting this action. Plaintiff’s
19 counsel are experienced in handling complex class action claims, in particular claims brought under
20 the TCPA and other consumer protection statutes.

21 39. Commonality and Predominance. There are well-defined common questions of fact
22 and law that exist as to all members of the Classes defined above and predominate over any questions
23 affecting only individual members of the Classes. These common legal and factual questions, which
24 do not vary from Class member to Class member and may be determined without reference to the
25 individual circumstances of any Class member, include (but are not limited to) the following:

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- 1 a) Whether Defendant or affiliates, subsidiaries, or agents of Defendant
2 transmitted advertising or telemarketing text messages to Plaintiff's and
3 Class members' cellular telephones;
- 4 b) Whether such text messages were sent using an "automatic telephone
5 dialing system";
- 6 c) Whether Defendant or affiliates, subsidiaries, or agents of Defendant
7 can meet their burden to show Defendant obtained "prior express
8 written consent" (as defined by 47 C.F.R. 64.1200(f)(8)) to send the text
9 messages complained of, assuming such an affirmative defense is
10 raised;
- 11 d) Whether Defendant or affiliates, subsidiaries, or agents of Defendant
12 transmitted, within a 12-month period, more than one text message to
13 the cellular telephones of Plaintiff and Class members despite such
14 numbers having been registered for more than 30 days on the DNC List;
- 15 e) Whether Defendant or affiliates, subsidiaries, or agents of Defendant
16 should be enjoined from engaging in such conduct in the future.

17 40. Superiority. A class action is superior to other available methods for the fair and
18 efficient adjudication of this controversy because individual litigation of the claims of all Class
19 members is impracticable. Even if every member of the Class could afford to pursue individual
20 litigation, the Court system could not. Individualized litigation would also present the potential for
21 varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all
22 parties and to the court system by causing multiple trials of the same factual issues. By contrast, the
23 maintenance of this action as a class action, with respect to some or all of the issues presented herein,
24 presents few management difficulties, conserves the resources of the parties and the court system and
25 protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the management
26 of this action as a class action. Class wide relief is essential to compel compliance with the TCPA.
27 The interest of Class members in individually controlling the prosecution of separate claims is small
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1 because the statutory damages in an individual action for violation of the TCPA are small.
2 Management of these claims is likely to present significantly fewer difficulties than are presented in
3 many class actions because the text messages at issue are all automated and the Class members, by
4 definition, did not provide the prior express written consent required under the statute to authorize
5 such text messages to their cellular telephones. The Class members can be readily located and notified
6 of this class action through Defendant's records and, if necessary, the records of cellular telephone
7 providers.

8 41. Additionally, the prosecution of separate actions by individual Class members would
9 create a risk of multiple adjudications with respect to them that would, as a practical matter, be
10 dispositive of the interests of other members of the Classes who are not parties to such adjudications,
11 thereby substantially impairing or impeding the ability of such nonparty Class members to protect
12 their interests. The prosecution of individual actions by Class members could further establish
13 inconsistent results and/or establish incompatible standards of conduct for Defendant.

14 42. Defendant or any affiliates, subsidiaries, or agents of Defendant have acted on grounds
15 generally applicable to the Classes, thereby making final injunctive relief and corresponding
16 declaratory relief with respect to the Classes as a whole appropriate. Moreover, on information and
17 belief, Plaintiff alleges that the TCPA violations complained of herein are substantially likely to
18 continue in the future if an injunction is not entered.

FIRST CLAIM FOR RELIEF
Violation of the TCPA, 47 U.S.C. § 227(b)(3) & 47 U.S.C. § 227(b)(1)(A)
(On Behalf of Plaintiff and the ATDS Class and
Failure to STOP Class Members Against Defendant)

43. Plaintiff incorporates by reference the foregoing paragraphs of this Class Action Complaint as if fully stated herein.

44. The foregoing acts and omissions constitute violations of the TCPA by Defendant, including but not limited to violations of 47 U.S.C. § 227(b)(1).

45. As a result of Defendant's violations of the TCPA, Plaintiff and all ATDS Class and Failure to STOP Class members are entitled to, and do seek, injunctive relief prohibiting such conduct violating the TCPA in the future pursuant to 47 U.S.C. § 227(b)(3).

1 46. As a result of Defendant's violations of the TCPA, Plaintiff and all ATDS Class and
2 Failure to STOP Class members are also entitled to, and do seek, an award of \$500.00 in statutory
3 damages for each violation of the TCPA (or \$1,500.00 for any such violations committed willfully or
4 knowingly) pursuant to 47 U.S.C. § 227(b)(3).

5 47. Plaintiff and the ATDS Class and Failure to STOP Class members also seek an award
6 of attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

**Violation of the TCPA, 47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(c)(2)
(On Behalf of Plaintiff and the DNC List Class Members Against Defendant)**

9 48. Plaintiff incorporates by reference the foregoing paragraphs of this Class Action
10 Complaint as if fully stated herein.

11 49. Plaintiff and each member of the DNC List Class received, within any 12-month
12 period, more than one text message that promoted the sale of Defendant's goods or services at a time
13 more than 30 days after Plaintiff and each DNC List Class member had registered their respective
14 phone numbers with the national Do-Not-Call Registry. Each such text message constituted a
15 telephone solicitation call within the meaning of the TCPA and its implementing regulations. Neither
16 Plaintiff nor any other member of the DNC List Class provided Defendant prior express written
17 consent to receive such text messages.

18 50. Defendant's transmission of more than one text message solicitation within any 12-
19 month period to Plaintiff's 9785 Number and to each DNC List Class member's cellular telephone
20 number, as set forth above, constituted violations of the TCPA by Defendant, including but not limited
21 to violations of 47 U.S.C. § 227(c)(5) and the implementing regulations promulgated thereunder at
22 47 C.F.R. § 64.1200(c)-(e), including but not limited to 47 C.F.R. § 64.1200(c)(2) and 47 C.F.R. §
23 64.1200(e).

24 51. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), and the implementing
25 regulations promulgated thereunder at 47 C.F.R. § 64.1200(c)-(e), including but not limited to 47
26 C.F.R. § 64.1200(c)(2) and 47 C.F.R. § 64.1200(e). Plaintiff and all DNC List Class members are

1 entitled to, and do seek, injunctive relief prohibiting such conduct violating the TCPA in the future
2 pursuant to 47 U.S.C. § 227(c)(5)(A).

3 52. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), and the implementing
4 regulations promulgated thereunder at 47 C.F.R. § 64.1200(c)-(e), including but not limited to 47
5 C.F.R. § 64.1200(c)(2) and 47 C.F.R. § 64.1200(e), Plaintiff and all DNC List Class members are
6 also entitled to, and do seek, an award of statutory damages of up to \$500.00 (or up to \$1,500.00 for
7 any willful or knowing violations) for each such violation of the TCPA pursuant to 47 U.S.C.
8 § 227(c)(5)(B).

9 53. Plaintiff and the DNC List Class members also seek an award of attorneys' fees and
10 costs.

PRAYER FOR RELIEF

12 WHEREFORE, Plaintiff Amanda Hill prays for relief and judgment in favor of herself and
13 the Classes as follows:

14 A. Statutory damages of \$500.00 (or \$1,500.00 for any willful or knowing violations) for
15 Plaintiff and each member of the ATDS Class and Failure to STOP Class for each of Defendant's
16 violations of 47 U.S.C. § 227(b)(1)(A) pursuant to 47 U.S.C. § 227(b)(3);

17 B. Statutory damages of \$500.00 (or up to \$1,500.00 for any willful or knowing
18 violations) for Plaintiff and each member of the DNC List Class for each of Defendant's violations
19 of 47 U.S.C. § 227(c)(5), and the implementing regulations promulgated thereunder at 47 C.F.R. §
20 64.1200(c)-(e), including but not limited to 47 C.F.R. § 64.1200(c)(2) and 47 C.F.R. § 64.1200(e),
21 pursuant to 47 U.S.C. § 227(c)(5)(B);

22 C. Injunctive relief prohibiting such violations of the TCPA in the future pursuant to 47
23 U.S.C. § 227(b)(3)(A) and 47 U.S.C. § 227(c)(5)(A);

D. An award of attorneys' fees and costs to counsel for Plaintiff and the Classes; and

25 E. An Order certifying this action to be a proper class action pursuant to Federal Rule of
26 Civil Procedure 23, establishing the Classes proposed herein and any Subclasses the Court deems

1 appropriate, finding that Plaintiff is a proper representative of the Classes, and appointing the law
2 firms representing Plaintiff as counsel for the Classes.

DEMAND FOR JURY TRIAL

4 Plaintiff, on behalf of herself and the Classes, hereby demands a trial by jury pursuant to
5 Federal Rule of Civil Procedure 38(b) on all claims so triable.

6 | Dated: January 28, 2019

HEDIN HALL LLP

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